

CCBE statement in favour of strengthening key procedural safeguards for unaccompanied children in transnational procedures

Statement in support of a report by Kids in Need of Defence (KIND) and Child Circle

13/05/2022

Executive summary

This statement aims at highlighting and providing the CCBE's support to a report published by Kids in Need of Defence (KIND) and Child Circle - entitled "Stepping Stones to Safety. Strengthening Key Procedural Safeguards for Unaccompanied Children in Transnational Procedures within the EU". The report stresses that ensuring better information, support and assistance for children, in particular through guardianship and access to free, quality legal assistance, is a vital ingredient to make progress with transnational procedures involving children. The report also highlights areas for improvement. The CCBE welcomes several points and recommendations made in this paper that have the potential to contribute to the strengthening of key procedural safeguards for unaccompanied children in such procedures. The CCBE also welcomes that the report recognises the importance of free and quality early legal assistance provided to unaccompanied children, the role played by lawyers in providing such assistance, and also the contribution that European networks such as the CCBE might have in different activities that would ultimately enhance procedural safeguards for unaccompanied children in transnational procedures.

Introduction

In December 2021, Kids in Need of Defence (KIND) and Child Circle published a report entitled "[Stepping Stones to Safety. Strengthening Key Procedural Safeguards for Unaccompanied Children in Transnational Procedures within the EU](#)".

The report focuses on the situations of unaccompanied children in the transactional procedures that may lead to the transfer from one Member State to another, such as family reunification procedures, voluntary relocation schemes or relocation under solidarity mechanisms.

The paper stresses that ensuring better information, support and assistance for children, in particular through guardianship and access to free, quality legal assistance, is a vital ingredient to make progress with transitional procedures involving children.

The role of those who provide legal services to the child and their cooperation and complementarity with guardians are one of the main aspects described in the report.

The CCBE was invited to participate in a consultation organised by the authors of the report with key regional stakeholders, the European Commission and EU agencies in order to provide its views on

issues discussed in the paper. By this statement, the CCBE would like to highlight and support some points and recommendations from the report.

Points and recommendations from the report¹

The following quotation from the report summarises its content: The report *“provides concrete and practical recommendations for improving the support and assistance provided to children”* and *“identifies a range of measures and actions which can achieve both incremental improvements in practice in the short term and better systems in the longer term”*.

By this statement, the CCBE would like to underline and endorse the most crucial aspects this report touches upon from the point of view of legal professionals.

General considerations

- For several reasons, such as their vulnerability or the potential complexity of their cases, unaccompanied children are in particular need of legal assistance from the first instance.
- Decisions on transfers of children to another country are likely to have important consequences and thus require particular safeguards.
- Any interviews, assessments (especially age assessments) and decisions regarding transfers under transnational procedures should be preceded by the appointment of a guardian and legal assistance provider.
- Bolstering procedural safeguards is a means to improve the process since it ensures “smoother national and cross-border case management and enables the professionals working directly with children to assist them in securing comprehensive, secure and sustainable solutions”.
- “Making quality legal assistance available at the earliest possible moment is important for both the child (and their guardian) and the State because it enhances the ability to assess vulnerabilities, identify the right procedural pathway, and ensures that the child’s case is considered properly”.
- “The guardian and the legal assistance provider have complementary roles” and the transfer of a child should be supported by their transnational cooperation.
- Regarding decision-making processes, “the child should have a right to appeal the decision and should be entitled to support from their guardian and legal assistance provided for such a review”.
- As stressed by the European Union Agency for Fundamental Rights (FRA), one should remember “the importance of free legal information, assistance and representation to the child and to the guardian to ensure their understanding of the different procedures and to assess the best legal pathway for the child”.

¹ This part quotes and is based on the content of the report.

Five key areas where there is need for action

- Ensure a clear entitlement in the law to safeguards in transnational proceedings and put in place transparent decision making procedures
 - Access to guardianship and quality legal assistance from the earliest possible moment must be ensured.
 - EU law should ensure that the guardian supports the child in accessing and benefiting from free quality legal assistance.
 - Legal assistance and access to a specialised lawyer in assisting unaccompanied children in their procedural pathways should be frontloaded.
 - EU law should provide an entitlement to legal assistance at the crucial stage of a child planning their procedural pathway, through family reunion or relocation procedures.
 - EU law should provide that States promote and facilitate continuity and stability of the guardianship and the provision of legal assistance to unaccompanied children in transnational procedures.
 - Children should receive written and reasoned decisions in transnational procedures and access to reviews and appeals should exist for children who are denied a possible transfer to a safer location in transnational procedures.
- Enhance the quality of assistance, in particular, by increasing specialised knowledge
 - Involvement of dedicated and trained lawyers and guardians with experience and knowledge, typically contributes to proper decision making and can ensure family reunion or relocation occurs when it is found to be in the best interest of the child.
 - On the contrary, when a child is advised by a legal assistance provider without the proper skills and competences, this may cause manifest difficulties in procedures.
 - There is need to improve qualifications and specialised knowledge of lawyers through such initiatives like the training programmes on legal assistance in asylum and migration law matters, organised by European Lawyers Foundation or under the HELP programme, and supported by the CCBE and national Bars.
- Improve the ability of legal assistance providers and guardians to work together and with others in order to ensure a child-centred approach in complex, inter-agency settings
 - There need to be better case management procedures and practices to allow guardians, lawyers and authorities properly to identify the appropriate procedures and manage their respective responsibilities.
 - Bar guidance and standards which address the cooperation between lawyers and guardians are good practical tools to promote better practices and to inform inter-agency case management.
- Enable guardians and legal assistance providers to better cooperate across borders
 - EU measures should better enable guardians and lawyers to access information or support in another country. They should be able to access sufficient information about the arrangements proposed for the child in another country in order to be able to provide proper input to the decision making process.

- Information on the conditions to which children would be transferred should be available to guardians, legal assistance providers and children themselves.
- Existence of European networks of professionals and/or professional bodies holds the potential for strengthening cross border networking for a range of purposes, from exchange of information, experience and good practice to facilitating connections in specific cases, and raising awareness amongst its members.
- It would be useful to build connections between the different networks of authorities, guardianship organisations and professional bodies for lawyers to promote more transparent, efficient and child-centred processes.
- Increase the availability of guardians and legal assistance through better resource management
 - Only specialised legal assistance provision will be helpful. This includes private sector pro bono lawyers, who have been trained and are working under the supervision and mentorship of expert attorneys.

Conclusion

The CCBE welcomes the recommendations that have the potential to contribute to the strengthening of key procedural safeguards for unaccompanied children in transnational procedures.

The CCBE also welcomes that the report recognises the importance of free and quality early legal assistance provided to unaccompanied children, the role played by lawyers in providing such assistance, and also the contribution that European networks such as the CCBE might have in different activities that would ultimately enhance procedural safeguards for unaccompanied children in transnational procedures.

The CCBE agrees that “Targeted and sustainable resources will need to be brought to bear to achieve certain improvements, at both the regional and national levels. It will be important to take the opportunity to leverage resources across the region through transnational actions and exchange. The private legal community and the corporate world can be valuable partners in helping to bridge resource challenges, particularly when provided with high quality training and mentorship.”.

The CCBE welcomes that “KIND and Child Circle also aim to build bottom-up progress, supporting specialisation and the availability of assistance from legal professionals and the pro bono community”.

The CCBE remains available to engage in further cooperation in order to contribute to the establishment of frameworks favouring the best interest of and the respect for fundamental rights of unaccompanied children.

In this regard, the CCBE is ready to discuss its potential involvement in and support for any ongoing or future actions proposed in the report addressed to various actors, such as:

- Exchange of experience, documenting good practice and procedures
- Developing recommendations for principles for Model Standard Operating Procedures for transnational procedures
- Developing guidance on procedural safeguards in transnational procedures
- Developing recommendations for Common European Asylum System (CEAS) reform

- Strengthening monitoring and accountability
- Raising awareness of need for specialised knowledge and skills for guardians and legal assistance providers
- Specialised training for guardians and legal assistance providers
- Support for professional networking to enhance specialised knowledge
- Explore, enhance and promote role of existing transnational networks, e.g. Dublin network, potentially European Guardianship Network and the CCBE
- Expanding legal aid for assistance in receiving countries to ensure continuity and stability of assistance to child, and address any appeals
- Support for cross-border networking and support services to guardians and legal assistance providers
- Support for pro bono initiatives to assist in transnational procedures, pending further strengthening of publicly-funded legal assistance
- Creation of pools of specialised guardians and legal assistance providers to support children in transnational procedures, in particular settings
- Practical recommendations to frontline actors on assuring access to guardianship and legal assistance

In light of the current migratory situation in Europe, following the invasion of Ukraine by Russia, the CCBE would also like to stress that many of the recommendations and good practices described above, if relevant and applicable, should be drawn upon in case of unaccompanied children fleeing Ukraine.